IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WP(C).No. 27262 of 2007(U)

PETITIONER:

V.S.JAYAKRISHNAN,
GOVERNMENT CONTRACTOR,
VALIYAPARAMBIL HOUSE,
ETTUMANOOR P.O., KOTTAYAM.

BY ADV. SRI.MURALI PURUSHOTHAMAN
SRI.DEEPU LAL MOHAN

RESPONDENTS:

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1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VAIDHYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM.

2. THE ASSISTANT EXECUTIVE ENGINEER,
T.C.SUB DIVISION, POOVANTHURUTHU,
PAKKIL P.O., KOTTAYAM - 686 012.

BY S.C. MR. P.P. THAJUDEEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 27262 OF 2007 U
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Dated this the 28th September, 2007

J U D G M E N T

The prayer in this writ petition is to quash Ext. P14 to the extent Ext. P2 contract has been terminated at the risk and cost of the petitioner. Petitioner also seeks a direction to the 2nd respondent to relieve him from the work without any consequences and also to release the security deposit furnished for the work awarded to him.

2. Ext. P2 is the contract that was entered into between the petitioner and the 1st respondent. According to the learned counsel for the writ petitioner, the work ought to have been completed, within 60 days. But the petitioner could not commence the work on account of the indifference of the officers of the 1st respondent. He would submit that even the site was not handed over during the contract period and the default of the respondents alone had resulted in the impossibility of the performance of the contract. On this basis, it is stated that the invocation of the

risk and cost clause and also the retention of the security furnished is illegal.

3. The learned Standing Counsel for the 1st respondent on the other hand would submit that though the Board did whatever it was obliged to do in terms of the contract, the petitioner committed default and was demanding revision of rates. It is submitted that before terminating the contract he was even heard in the matter. On termination of the contract, the work was re-tendered and fresh contract has been finalised with a different contractor at the same rate as was awarded to the petitioner. According to the Standing Counsel, whatever the Board has done is in terms of the agreement (Ext. P2) and the petitioner cannot wriggle out of the contract obligations and consequences of default.

4. I have considered the submissions made by both sides. It is an admitted fact that the parties are governed by Ext. P2 contract entered into between the parties. The contract is not a statutory contract also. That apart, in the nature of the controversy the issue that calls for resolution is whether it is the

petitioner who had committed breach of contract or whether it is the Board which is responsible for the same. This calls for interpretation of the clauses of the agreement and appreciation of evidence on the basis of which only the correctness of the action taken by the Board to invoke the risk and cost clause and the retention of the security deposit can be decided. This type of an adjudication cannot be done in a proceedings under Article 226 of the Constitution of India.

With liberty to the petitioner to pursue his remedies in appropriate proceedings, I dismiss this writ petition.

ANTONY DOMINIC
JUDGE

jan/-